

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

RALPH E. HICKS,

Plaintiff,

v.

MICHAEL LEESON, et al.

Defendants.

CIVIL ACTION

No. 03-2481-CM

MEMORANDUM AND ORDER

Plaintiff filed the instant action on September 17, 2003. On January 9, 2004, defendant Jeff Baker filed a Motion to Dismiss (Doc. 32). That same day, defendants Ann Keary, Michael Leeson, Bill Storey, C.J. Sullivan, and Leslie Young also filed a Motion to Dismiss (Doc. 34). On May 28, 2004, the court granted defendants' motions to dismiss, finding that defendant Jeff Baker did not act under color of state law and that the court lacked subject matter jurisdiction over the remaining defendants.

On June 14, 2004, plaintiff filed a Motion to Review the Order in Question (Doc. 59). In that motion, plaintiff refers to the court's opinion as "verbal garbage" and further states that, if the case is not reopened, he will "proceed with charges against the court & its judges." Plaintiff also states that he is "aware of the whereabouts of the previous judges [and] defendants in this case."¹

¹While courts generally treat pro se litigants with a leniency not afforded to those represented by legal counsel, this court will not tolerate abuse and disrespect toward the judicial process. Accordingly, any further pleadings by plaintiff that contain such abusive and threatening language will be stricken, and sanctions could be imposed.

The Federal Rules of Civil Procedure do not recognize a “motion for reconsideration.” *Hatfield v. Board of County Comrs.*, 52 F.3d 858, 861 (10th Cir. 1995). When reviewing a motion that has been identified as a motion for reconsideration, the court construes such a filing in one of two ways. A motion filed within ten days of the entry of judgment is treated as a motion to alter or amend the judgment under Fed. R. Civ. P. 59(e). On the other hand, a motion filed after the ten-day deadline is considered a motion seeking relief from the judgment under Fed. R. Civ. P. 60(b). In this case, because plaintiff’s motion was filed after the ten-day deadline, the court construes the motion as a motion for relief under Rule 60(b).

“Relief under Rule 60(b) is extraordinary and may only be granted in exceptional circumstances.” *Bud Brooks Trucking, Inc. v. Bill Hodges Trucking Co.*, 909 F.2d 1437, 1440 (10th Cir. 1990). Grounds warranting a motion to reconsider include (1) an intervening change in the controlling law, (2) new evidence previously unavailable, and (3) the need to correct clear error or prevent manifest injustice. Thus, a motion for reconsideration is appropriate where the court has misapprehended the facts, a party’s position, or the controlling law. It is not appropriate to revisit issues already addressed or advance arguments that could have been raised in prior briefing. *Servants of the Paraclete v. John Does, I-XVI*, 204 F.3d 1005, 1012 (10th Cir. 2000).

The court finds that the motion to reconsider does not present one of the three grounds that must be present for reconsideration. Therefore, the court concludes that the plaintiff has failed to demonstrate any of the exceptional circumstances supporting relief under Rule 60(b).

IT IS THEREFORE ORDERED that plaintiff's Motion to Review the Order in Question (Doc. 59) is denied.

Dated this 30th day of June 2004, at Kansas City, Kansas.

s/ Carlos Murguia
CARLOS MURGUIA
United States District Judge